

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANTONIA PHILLIPS

Plaintiff,

v.

THE CITY OF NEW YORK, ET AL.,

Defendants.

USDC SDNY
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03 Civ. 4887 (VM)

ORDER

WHEREAS on December 8, 2016, M&T Bank ("M&T"), as Trustee of the Antonia Phillips Supplemental Needs Trust (now the Henesy Feliz Supplemental Needs Trust) ("Trust"), submitted a Notice of Petition wherein M&T filed its Final Accounting with the Court, seeking, *inter alia*, approval of the Final Account, approval of its resignation as Trustee, and discharge as Trustee (Dkt. No. 194).

WHEREAS on March 10, 2017, counsel for M&T filed an Affidavit of Legal Services, seeking payment from the Trust assets of legal fees in the amount of \$10,303.50, and disbursements in the amount of \$2,054.06, for a total of \$12,357.56, in connection with legal services rendered to M&T in its capacity as Trustee for the period August 18, 2016 through March 1, 2017 (Dkt. No. 217) (the "First Fee Application"). On March 24, 2017, the Court ordered payment of the fees and disbursements requested in the First Fee Application. (Dkt. No. 222). Following objections to M&T's Final Accounting and First Fee Application raised by Harry H. Rimm, Guardian ad Litem for the Trust, and the New York City Human Resources Administration Department of Social Services, the Court rescinded its March 24, 2017 Order on May 8, 2017, pending resolution of the objections (Dkt. No. 241).

WHEREAS since that time, M&T and Mr. Rimm have worked to resolve issues raised

by Mr. Rimm with respect to M&T's Final Accounting, including issues related to the proper income tax treatment of the trust as a Grantor Trust and the preparation and filing of income tax returns on behalf of the Trust and on behalf of Henesy Feliz ("Feliz") (the "Income Tax Issues"). As a result of those efforts, M&T has reimbursed the Trust in the amount of \$5,152.00 for preparation of fiduciary and personal income tax returns for years 2014, 2015, and 2016, and for taxes paid by the Trust in 2007, 2008, 2009, and 2013.

WHEREAS M&T has agreed to reimburse the Trust in the further amount of \$24,068.00 for the following: (1) \$2,864.00 for penalties and interest related to Feliz's personal income tax returns for 2014, 2015, and 2016; (2) \$1,204.00 for overpayments made related to income taxes owed for 2016 which cannot be carried forward; and (3) \$20,000.00 for expenses incurred by Mr. Rimm's law firm in addressing the Income Tax Issues.

WHEREAS M&T has agreed to withdraw that portion of its First Fee Application seeking payment of \$2,054.25 in disbursements incurred in connection with service of process of its Notice of Petition and Final Accounting. Mr. Rimm has no objection to payment of the balance of the fees and disbursements sought in the First Fee Application, \$10,353.31, from the assets of the Trust.

WHEREAS on November 22, 2019, counsel for M&T filed an Affidavit of Legal Services, seeking payment from the Trust assets of legal fees in the amount of \$15,055.50 and disbursements in the amount of \$440.45, for a total of \$15,495.95, for legal services rendered to M&T in its capacity as Trustee for the period March 1, 2019 through August 30, 2019 (Dkt. No. 346-1) (the "Second Fee Application"). Prior to its filing, Mr. Rimm reviewed the Second Fee Application, and changes were made based on his comments and concerns, including the removal of several items related to resolution of the Income Tax Issues. Mr.

Rimm has no objection to payment of the fees and disbursements sought in the Second Fee Application from the assets of the Trust.

WHEREAS upon consideration of the documents discussed above and other documents of record, the Court is persuaded that approval of M&T's Final Account is warranted and that its resignation as Trustee should be permitted. Accordingly, it is hereby

ORDERED that the Final Account of M&T Bank (Dkt. No. 194-2) is approved; and it is further

ORDERED that attorneys' fees and disbursements in the amount of \$10,353.31 sought in the First Fee Application be fixed and paid to Phillips Lytle LLP from the assets of the Trust within ten business days of entry of this Order; and it is further

ORDERED that attorneys' fees and disbursements in the amount of \$15,495.95 sought in the Second Fee Application be fixed and paid to Phillips Lytle LLP from the assets of the Trust within ten business days of entry of this Order; and it is further

ORDERED that M&T Bank shall reimburse the Trust in the amount of \$24,068.00 for expenses incurred in resolving the Income Tax Issues within ten business days of entry of this Order; and it is further

ORDERED that upon making the foregoing distributions and payments, that M&T Bank's resignation as Trustee is approved, and M&T Bank is hereby discharged and released as Trustee, from liability in connection with all matters embraced in said Final Account.

SO ORDERED.

Dated: New York, New York

20 December, 2019


VICTOR MARRERO, U.S.D.J.